

**REQUEST FOR CONTINUED EXAMINATION**

A request for continued examination has been filed in this application in response to the Advisory Action mailed July 11, 2008. The appropriate fee has been filed under 37 CFR 1.17(e). Claims 1– 12 are pending.

**REMARKS/ARGUMENTS****Claim Objections**

The examiner had objected to claims 1, 4 and 10 as containing informalities. Specifically the examiner suggests that the steps necessary for producing a plantlet are not present in the instant claims. Applicant has amended the claims to overcome the rejection; however, applicant respectfully asserts that one of skill in the art would know that rooting has occurred given that the claim recites the production of a transformed plantlet (which as acknowledged by the examiner requires rooting) as well as the teachings of the instant specification (p. 15,[085]).

The examiner's objection to claims 1, 4 and 10 was based on "informalities" (see p. 2, line 1, "Claim objections of the final action"); however, the objection was practically treated by the examiner as a *defacto* rejection with the requirement that applicant include a "rooting step" to demonstrate that a plantlet formed.

MPEP 706.01 Contrasted With Objections [R-2] states "The refusal to grant claims because the subject matter as claimed is considered unpatentable is called a "rejection." The term "rejected" must be applied to such claims in the examiner's action. If the form of the claim (as distinguished from its substance) is improper, an "objection" is made." (Emphasis added)

The requirement that applicant include a "rooting" step, to distinguish a process step clearly was a matter of substance and not form. Assuming *arguendo* that the examiner asserts that the

inclusion of rooting step was a matter of form, applicant's amendment to the claims explicitly including a rooting step should have satisfied the objection as a matter of form.

Applicant maintains that even in the absence of the amendment if the claims were to be viewed substantively, one of skill in the art would know from the state of the art and the instant specification that in order to form a plantlet, a rooting step is inherently present.

The inclusion of the rooting step in claims 1, 4 and 10 therefore complied with the objection set forth by the examiner. There were no other informalities presented by the examiner that applicant was required to address.

#### **Claim Rejections**

There are no outstanding rejections.

CONCLUSION

In view of the foregoing amendments, applicants believe all claims now pending in this Application are in condition for allowance. The issuance of a formal Notice of Allowance at an early date is respectfully requested.

If the Examiner believes a telephone conference would expedite prosecution of this application, please telephone the undersigned at 510-559-5731.

Respectfully submitted,



Howard Owens  
Reg. No. 58,219

USDA, ARS, OTT  
800 Buchanan Street  
Albany, California 94710  
Tel: 510-559-5731  
Fax: 510-559-5736